STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 27, 2022

IN THE MATTER OF:
Appeal Board No. 624179

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the
claimant from receiving benefits, effective October 21, 2021, on the basis
that the claimant voluntarily separated from employment without good cause.
The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded
a full opportunity to be heard and at which testimony was taken. There were
appearances by the claimant and on behalf of the employer. By decision filed
June 7, 2022 (), the Administrative Law Judge
overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a seasonal worker for a
municipality performing park inspections, greeting pedestrians, cleaning
parks, painting benches and raking leaves for approximately 13 years until
October 19, 2021. She worked daily from 7:00 A.M. until 3:30 P.M. In 2021, the
last day of seasonal employment was December 30, 2021.

In September 2021, the claimant took many days off from work. Occasionally she
was given permission to leave work early. Eventually, it was announced that
everyone was going to work until 3:30 P.M. The claimant did not request a
change in hours due to the seasonal nature of her job. The claimant's
supervisor told her that she was not eligible for a leave of absence as a

seasonal worker and no other options were provided.

On or about October 19, 2021, the claimant's supervisor told her that she could not keep taking days off from work. The claimant was told that she could stay and work if she wanted to, and that it was up to the claimant, but if the supervisor received documentation from management stating that the claimant's employment is terminated, that is what would happen. The claimant's supervisor suggested that the claimant could resign immediately so that she did not have to go through the termination of employment and so she could come back in the future. The claimant was not told when management would be terminating her employment. The claimant's supervisor gave her a resignation form which the claimant signed. Continuing work was available.

OPINION: The credible evidence establishes that the claimant quit her job in anticipation of discharge when she submitted a resignation upon the suggestion of her supervisor to avoid termination of employment in the future. It is well settled that voluntarily quitting in anticipation of discharge does not constitute good cause under the law (see Appeal Board No. 602411). Significantly, the claimant was not told that her termination was imminent or even when her employment would be terminated. Admittedly, the claimant was allowed to stay on and work if she chose to do so, despite the possibility that management may terminate her employment at an unspecified later time. While the claimant contended that she was told to resign or her employment would be terminated due to time and attendance issues, this contention is undermined by the claimant's inconsistent testimony and admission that continuing work was available, and she could work if she wanted to do so until an unspecified time when management would terminate her employment. Under these circumstances, we conclude that the claimant did not have a compelling reason to leave her employment and she was properly disqualified from the receipt of benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 21, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER